

II. REMARKS/ARGUMENTS

A. Comments regarding previously submitted Amendments and Remarks

The present amendment is being filed with the assumption that the amendment submitted June 9, 2005 in response to the final action dated February 22, 2005 has been entered in the record of the present patent application. If the amendment submitted June 9, 2005 has not been entered, the applicant respectfully requests that it be entered at this time and prior to entering the current amendments and remarks. For the examiner's convenience, a copy of the amendment submitted June 9, 2005 is attached hereto.

B. Summary of the Amendments

Claims 155, 158-172, 180-183, 185-187 and 190-199 have been amended to clarify the subject matter being claimed. The applicant submits that the amendments have not been made to overcome the art cited by the examiner.

Claims 156, 157, 173-179, 184, 188 and 189 have been cancelled without prejudice.

Claims 200 to 219 are new.

The applicant submits that the amendments introduce no new matter.

C. Statements of Rejection under 35 USC §103

In the Office Action, the Examiner has rejected claims 155-157, 160-163, 167, 170-172, 173-180, 183-189, 192-195 and 198 under 35 U.S.C. §103(a) as being unpatentable over US Patent 5,706,191 (hereafter to be referred to as Bassett et al.) in view of U.S. Patent 6,259,442 (hereafter referred to as Britt Jr. et al.)

The Examiner has further rejected claims 158, 159, 168, 169 and 190 under 35 U.S.C. §103(a) as being unpatentable over Bassett et al. in view of Britt Jr. et al. and in further view of U.S. Patent No. 5,877,957 (hereafter to be referred to as Bennett).

The Examiner has further rejected claims 164-166 under 35 U.S.C. §103(a) as being unpatentable over Bassett et al. in view of Britt Jr. et al. and in further view of U.S. Patent No. 6,459,959 (hereafter to be referred to as Williams et al.).

The Examiner has further rejected claims 181, 182, 191, 196 and 197 under 35 U.S.C. §103(a) as being unpatentable over Bassett et al. in view of Britt Jr. et al. and in further view of U.S. Patent No. 5,764,639 (hereafter to be referred to as Staples et al.).

D. Reply to the Rejections of claims 155-157, 160-163, 167, 170-172, 173-180, 183-189, 192-195 and 198 under 35 USC §103

Claims 156, 157, 173-179, 184 and 188-189 have been cancelled. As such, the rejection with respect to these claims are considered moot.

As will be argued in detail below, the Applicant respectfully submits that the Examiner has failed to establish a *prima facie* case of obviousness against claims 155, 160-163, 167, 170-172, 180, 183, 185-187, 192-195 and 198, on at least one count.

As per §2142 of the MPEP, in order to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. And finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

With respect to claims 155, 160-163, 167, 170-172, 180, 183, 185-187, 192-195 and 198, the Applicant respectfully disagrees with the Examiner's rejection on the basis that the Examiner has failed to establish a *prima facie* case of obviousness on the basis that there is no suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings.

The applicant respectfully submits that the person skilled in the art would not have considered the teachings of Bassett et al. in view of Britt Jr. et al. to arrive to the claimed invention and that there is no suggestion or motivation to modify the reference or to combine reference teachings. As such, the combination of Bassett et al. in view of Britt Jr. et al. is not sufficient to establish a *prima facie* case of obviousness.

Claims 155, 160-163, 167, 170-172, 180, 183, 185, 186, 195, 198

1) The purpose of the cited references is different from the purpose of the claimed invention

The Applicant respectfully submits that the purpose of the claimed invention (independent claims 155, 186) is to provide a spa control system comprising an interface signal converter (means) operative for establishing a communications link with a remote computer and receiving communication signals conveying software components comprising updates to software already installed on the spa controller (means).

The Applicant also submits that the purpose of the claimed invention (independent claim 195) is to provide a spa control system comprising an interface signal converter in communication with a spa controller and operative for exchanging signals with a hand-portable remote computer over a wireless communications link, wherein the signals include software components comprising updates to software already installed on the spa controller.

In contrast, the purpose of the *Basset et al.* reference is to provide a system for “connecting appliances, [...] in controlling relationships with one another, and with a central control device, [...], in order to enable all such appliances and systems in a residence or other occupied space to operate in a centrally controlled manner.” (see column 1, lines 10-23).

The Examiner’s attention is respectfully directed to the case of *In re Clay* (966 F.2d 656, 23 USPQ2d 1058(Fed. Cir.1992), which states that “the purposes of both the invention and the prior art are important in determining whether the reference is reasonably pertinent to the problem the invention attempts to solve...If [a reference] is directed to a different purpose, the inventor would accordingly have had less motivation or occasion to consider it.”

The Applicant respectfully submits that given that the purpose of the present invention is completely different from the purpose of *Basset et al.*, as per *In re Clay*, an inventor would not have had any motivation or occasion to consider this reference.

Therefore, since there is no motivation or suggestion to consider *Basset et al.*, the Applicant respectfully submits that the combination of *Basset et al.* with Britt, Jr. et al. does not support a *prima facie* case of obviousness.

2) *The references cited relate to non-analogous fields of art*

The present application is directed to the field of spas and to devices for controlling spas. The applicant would like to point out that none of the documents relied upon by the examiner in rejecting the claims relate to this technical field.

The Examiner’s attention is directed to section 2141.01(a) of the MPEP, which states that to rely on a reference under 35 U.S.C. 103, it must be analogous prior art. It is also stated that the examiner must determine what is “analogous prior art” for the purpose of analyzing the obviousness of the subject matter at issue. “In order to rely on a reference as a basis for rejection

of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." *In re Oetiker*, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992).

Britt, Jr. et al. is neither in the field of applicant's endeavor, namely that of spa controllers, nor is it pertinent to the problem being solved, namely that of providing updates for software already installed on a spa controller (independent claims 155, 186, 195).

Britt, Jr. et al. pertains to the general field of computer software and describes a method and system for upgrading software over a network. The Applicant respectfully submits that the general field of computer software is not within the same field of endeavor as spa control systems, and as such would not have been known to a person skilled in the spa control systems. Britt, Jr. et al. pertains to the upgrade of software on computing apparatus such as "set-top boxes, personal computers, hand-held devices, multi-processor systems, microprocessor-based or programmable consumer electronics, network PCs, minicomputers, mainframe computers, and the like." (Column 4, lines 31-38). Britt, Jr. et al. makes no mention whatsoever of spa controllers or anything to do with upgrading software on a spa controller nor on any type of similar controller at all.

As such, the applicant submits that Britt, Jr. et al. cannot be considered to establish a prima facie case of obviousness under 35 U.S.C. 103.

Similarly, Basset et al. is neither in the field of applicant's endeavor, namely that of spa controllers, nor is it pertinent to the problem being solved, namely that of providing updates for software already installed on a spa controller (independent claims 155, 186, 195).

Bassett et al. pertains to the field of automation systems for connecting devices within a home. The only relationship this reference has with the field of spa is that one of the appliances interconnected with the home automation systems could be "spa pool heater".

The Applicant respectfully submits that home automation systems are not within the same field of endeavor as spa control systems, and as such would not have been known to a person skilled in the spa control systems. Moreover, a person working in the field of spa control systems and seeking to solve a problem associated with spa control systems should not reasonably be expected to look to the field of home automation systems, in which the Examiner found the Bassett et al. reference, to find a solution to his or her problem.

As such, the applicant submits that Bassett et al. cannot be considered to establish a *prima facie* case of obviousness under 35 U.S.C. 103.

In light of the above, the applicant submits that neither Bassett et al. nor Britt, Jr. et al. can be considered to establish a *prima facie* case of obviousness under 35 U.S.C. 103. Therefore, the applicant submits that there is no motivation or suggestion to consider Bassett et al. or Britt, Jr. et al., alone or in combination, and as such submits that a *prima facie* case of obviousness is not supported.

Further Bassett et al. and Britt, Jr. et al. pertain to two (2) non-analogous fields of art. As such, there is no motivation to combine these references with one another.

In re Oetiker 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed Cir. 1992), the Court of Appeals found that “the combination of elements from non-analogous sources, in a manner that reconstructs the applicant’s invention only with the benefit of hindsight, is insufficient to present a *prima facie* case of obviousness.”

In light of the above, the Applicant respectfully submits that the Examiner has incorrectly combined the teachings of the references cited in order to arrive at the claimed invention.

3) Impermissible hindsight

The Examiner's attention is respectfully directed to the case of *In re Wasslau* 353 F.2d 238, 147 USPQ 391 (CCPA 1965), which states that "it is impermissible within the framework of section 103 to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art."

The Applicant is of the view that a person of ordinary skill in the art of bathing unit controllers would not have been reasonably expected to consider the Britt, Jr. et al. reference in combination with the Bassett et al. reference. The Applicant respectfully submits that the Examiner is using hindsight in order to reconstruct the Applicant's invention.

More specifically, the Examiner states that:

Bassett does not show that the remote computer connected to the interface signal converter can be used to download software to the spa controller. ... Britt Jr discloses a system for downloading software to client workstations on an as needed basis via satellite or via the internet (Figure 9). ... It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the software downloading capability of Britt Jr. as a way to upgrade the client software of Bassett because automated upgrades in software prevent such problems as outdated software, inconvenient personal use to install manual upgrades, forgetful users, and additions problems as cited in Col 1, lines 37 – 56 of Britt Jr.

Britt, Jr. et al. has nothing to do whatsoever with spas or spa controllers. In taking only the feature of the software download from the Britt, Jr. et al. reference, the Applicant respectfully submits that the Examiner is doing exactly what *In re Wasslau* warns against, which is to pick and choose from the reference only so much of it as will support his position. As such, the Applicant submits that the Examiner's rejection is improper.

There is nothing is Britt, Jr. et al. that suggests that the methods described therein could be used to upgrade software in a spa controller or any type of similar device. If the Examiner continues to be of the opposite view, the applicant respectfully requests that the Examiner indicate where in the prior art this is described or suggested.

In light of the above, the Applicant respectfully submits that there is no suggestion or motivation to combine the reference teachings, and that as such, the combination of these references is insufficient to present a *prima facie* case of obviousness.

4) Conclusion

The Applicant respectfully submits that the Examiner has failed to establish a *prima facie* case of obviousness on the basis that there is no suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings, and as such fails to support a rejection based on obviousness, the Applicant respectfully requests that the Examiner withdraw his rejection of claims 155, 160-163, 167, 170-172, 180, 183, 185-187, 192-195 and 198.

Combination does not result in claimed invention

Even if *prima facie* case of obviousness could be made and Bassett et al. and Britt, Jr. et al. were combined, which the applicant maintains there is no motivation for, the combination would not result in the claimed invention. More specifically, in Bassett et al., a central controller sends instructions to various appliances in order to “enable all such appliances and systems in a residence or other occupied space to operate in a centrally controlled manner.”(see *Basset et al. column 1, lines 10-23*). Bassett et al. a central controller interacts with various appliances through respective AIMS. The actual “appliance controllers”, which control the physical components of the appliances, are actually part of the appliances themselves in Bassett et al. and the central controller interacts with these appliance controllers through the AIMS. The applicant

respectfully submits that the central controller in Basset et al. cannot be considered to be a spa controller within the meaning of the present patent applicant and within the meaning in the art. Rather, the spa controller is more analogous to the “appliance controllers”. Combining Bassett et al. and Britt, Jr. et al. in order to provide for software upgrades would merely result in the central controller software being updated but in no way would the controllers for the appliances be modified.

Conversely, claim 155 (as amended) includes the limitation of an interface signal converter operative for:

- *receiving communication signals conveying software components over the communications link, said software components comprising updates to software already installed on said spa controller;*
- *communicating said software components to said spa controller;*

The applicant submits that the combination of Bassett et al. and Britt, Jr. et al. fails to teach or suggest the above emphasized limitations. As such, the applicant submits that claim 155 is neither anticipated nor rendered obvious by the documents cited by the examiner.

Claims 160-163, 167, 170-172, 180, 183, 185 depend directly or indirectly from claim 155 and as such incorporate by reference all its limitations. As such, the applicant submits that claims 160-163, 167, 170-172, 180, 183, 185 are neither anticipated nor rendered obvious by the documents cited by the examiner.

Claim 186 (as amended) includes the limitation of an interface signal converter means operative for:

- receiving communication signals conveying software components over the communications link, said software components comprising updates to software already installed on said spa controller means;
- communicating said software components to said spa controller means;

The applicant submits that the combination of Bassett et al. and Britt, Jr. et al. fails to teach or suggest the above emphasized limitations. As such, the applicant submits that claim 186 is neither anticipated nor rendered obvious by the documents cited by the examiner.

Claim 195 (as amended) includes the following limitations:

an interface signal converter in communication with said spa controller, *said interface signal converter being operative for exchanging signals with a hand-portable remote computer over a wireless communications link, wherein the signals include software components comprising updates to software already installed on said spa controller.*

The applicant submits that the combination of Bassett et al. and Britt, Jr. et al. fails to teach or suggest the above emphasized limitations. As such, the applicant submits that claim 195 is neither anticipated nor rendered obvious by the documents cited by the examiner.

Claim 198 depends directly or indirectly from claim 195 and as such incorporates by reference all its limitations. As such, the applicant submits that claim 198 is neither anticipated nor rendered obvious by the documents cited by the examiner.

Claims 187, 192-194

On p.4 of the office action, Claim 187 was rejected under 35 U.S.C. 103 with reference to *Basset et al.* alone.

1) The purpose of the cited references is different from the purpose of the claimed invention

The Applicant respectfully submits that the purpose of the claimed invention (independent claim 187) is to provide **a spa control system** comprising an interface signal converter operative for establishing a communications link with a remote computer, for receiving data comprising a record of errors from said spa controller and transmitting a signal conveying the record of errors to remote computer over the communications link.

In contrast, the purpose of the *Basset et al.* reference is to provide a system for “connecting appliances, [...] in controlling relationships with one another, and with a central control device, [...], in order to enable all such appliances and systems in a residence or other occupied space to operate in a centrally controlled manner.” (see column 1, lines 10-23).

As indicated above, the Examiner’s attention is respectfully directed to the case of *In re Clay* (966 F.2d 656, 23 USPQ2d 1058(Fed. Cir.1992), which states that “the purposes of both the invention and the prior art are important in determining whether the reference is reasonably pertinent to the problem the invention attempts to solve...If [a reference] is directed to a different purpose, the inventor would accordingly have had less motivation or occasion to consider it.”

The Applicant respectfully submits that given that the purpose of the present invention is completely different from the purpose of *Basset et al.*, as per *In re Clay*, an inventor would not have had any motivation or occasion to consider this reference.

In light of the above, the Applicant respectfully requests that the examiner withdraw his rejection of claims 187, 192-194.

E. Reply to the Rejections of claims 158, 159, 168, 169 and 190

Claims 158, 159, 168, 169 and 190 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Bassett et al. in view of Britt Jr. et al. and in further view of U.S. Patent No. 5,877,957 (hereafter to be referred to as Bennett).

As indicated above, there is no motivation to combined Bassett et al. in view of Britt Jr. et al.. nor to consider either one of these references and as such these references do not support a *prima facie* case of obviousness.

In addition, the applicant submits that Bennett alone neither teaches nor suggests the subject matter of claims 158, 159, 168, 169 and 190.

Furthermore, the applicant submits that Bennett relates to the field of home automation, which is non-analogous to the field of spa controllers. As such, the applicant submits that the person skilled in the art of spa controller would not have considered Bennett when faced with the problem related to a spa controller. Consequently, Bennett is not sufficient to support a *prima facie* case of obviousness.

In light of the above, the Applicant respectfully requests that the examiner withdraw his rejection of claims 158, 159, 168, 169 and 190.

F. Reply to the Rejections of claims 164-166

Claims 164-166 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Bassett et al. in view of Britt Jr. et al. and in further view of U.S. Patent No. 6,459,959 (hereafter to be referred to as Williams et al.).

As indicated above, there is no motivation to combined Bassett et al. in view of Britt Jr. et al.. nor to consider either one of these references and as such these references do not support a *prima facie* case of obviousness.

In addition, the applicant submits that Williams et al. alone neither teaches nor suggests the subject matter of claims 164-166.

In light of the above, the Applicant respectfully requests that the examiner withdraw his rejection of claims 164-166.

G. Reply to the Rejections of claims 181, 182, 191, 196 and 197

Claims 181, 182, 191, 196 and 197 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Bassett et al. in view of Britt Jr. et al. and in further view of U.S. Patent No. 5,764,639 (hereafter to be referred to as Staples et al.).

As indicated above, there is no motivation to combined Bassett et al. in view of Britt Jr. et al.. nor to consider either one of these references and as such these references do not support a *prima facie* case of obviousness.

The applicant submits that Staples et al. alone neither teaches nor suggests the subject matter of claims 181, 182, 191, 196 and 197.

Furthermore, the applicant submits that Staples et al. relates to the field of system and method which provides connectivity between one or more remote users and a corporate office, which has nothing to do whatsoever with the field of spa controllers. The applicant submits that it is not reasonable for a person skilled in the art of spa controller would to have considered Staples et al. when faced with the problem related to a spa controller. Consequently, Staples et al. cannot be used to support a *prima facie* case of obviousness.

In light of the above, the Applicant respectfully requests that the examiner withdraw his rejection of claims 181, 182, 191, 196 and 197.

H. New Claims 200-219

The Applicant submits that new claims 200-219 are in allowable form and are neither anticipated nor rendered obvious by the documents cited by the examiner.

Claim 200 includes the limitation:

said spa controller being operative for:

- receiving signals conveying the software components from said interface signal converter;
- ***updating software already installed on said spa controller at least in part on the basis of the software components received from interface signal converter.***

The applicant submits that the combination of the art cited by the examiner fails to teach or suggest the above emphasized limitations. As such, the applicant submits that claim 200 is neither anticipated nor rendered obvious by the documents cited by the examiner.

Claims 201-215 depend directly or indirectly from claim 200 and as such incorporate by reference all its limitations. As such, the applicant submits that claims 201-215 are neither anticipated nor rendered obvious by the documents cited by the examiner.

Claim 216 includes the limitation:

transmitting information conveying software components over the communications link, *the software components being adapted to cause software already installed on the spa controller to be updated.*

The applicant submits that the combination of the art cited by the examiner fails to teach or suggest the above emphasized limitations. As such, the applicant submits that claim 216 is neither anticipated nor rendered obvious by the documents cited by the examiner.

Claims 217-219 depend directly or indirectly from claim 216 and as such incorporate by reference all its limitations. As such, the applicant submits that claims 217-219 are neither anticipated nor rendered obvious by the documents cited by the examiner.


CONCLUSION

It is respectfully submitted that claims 155, 158-172, 180-183, 185-187, 190-199 and 200-219 are in condition for allowance. Reconsideration of the rejections and objections is requested. Allowance of claims 155, 158-172, 180-183, 185-187, 190-199 and 200-219 at an early date is solicited.

If the claims of the application are not considered to be in full condition for allowance, for any reason, the Applicant respectfully requests the constructive assistance and suggestions of the Examiner in drafting one or more acceptable claims or in making constructive suggestions so that the application can be placed in allowable condition as soon as possible and without the need for further proceedings.

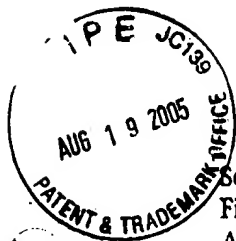
Respectfully submitted,

Date: August 18, 2005

A handwritten signature in black ink, appearing to read 'Emma Start', with a long horizontal flourish extending to the right.

Emma Start
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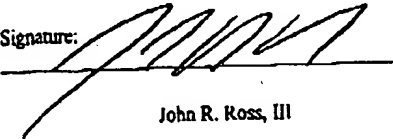
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Serial No.: 09/709,787
Filed: 11/07/00
Applicant: Laflamme
For: Spa Controller Computer
Interface for Spas

Examiner: Masinick, Michael D.
Group Art: 2125

<p align="center">Certificate of Transmission</p> <p>I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. 703-872-9306 on <u>6/9/05</u></p> <p>Signature: </p> <p align="center">John R. Ross, III</p>
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Amendment G

Commissioner of Patents and Trademarks
Washington, DC 20231

Sir,

This letter is in response to Office Action dated 02/22/2005. Please amend the above-
identified patent application as follows:

Amendments to the Claims are reflected in the listing of claims which begins on page 2
of this paper.

Remarks/Arguments begin on page 9 of this paper.

06/10/2005 SSESHE1 00000052 200678 09709787

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This listing of claims will replace all prior versions, and listings, of claims in the application.

Listing of Claims:

Claims 1 – 154 (cancelled)

Claim 155. (currently amended) A ~~remotely controlled and monitored~~ spa, comprising:

- A) a spa controller,
- B) a interface signal converter, electrically connected to said spa controller, and
- C) a remote computer connected to said interface signal converter via a communications link, wherein said remote computer is used to download software to said spa controller,

wherein said interface signal converter converts communication signals transferred from said remote computer via said communications link and directs the converted signals to said spa controller, and wherein said interface signal converter converts signals from said spa controller to be communicated to said remote computer via said communications link.

Claim 156. (previously presented) The spa as in Claim 155, wherein said software comprises updates to software already installed on said spa controller.

Claim 157. (previously presented) The spa as in Claim 155, wherein said remote computer monitors spa controller software installed on said spa controller, wherein said software downloaded from said remote computer to said spa controller comprises updates to said spa controller software installed on said spa controller.

Claim 158. (previously presented) The spa as in Claim 155, wherein said interface signal converter comprises an RS transceiver.

Claim 159. (previously presented) The spa as in Claim 158, wherein said RS transceiver is an RS-485 transceiver.

Claim 160. (previously presented) The spa as in Claim 155, wherein said interface signal converter comprises an IR transceiver.

Claim 161. (previously presented) The spa as in Claim 155, wherein said interface signal converter comprises an RF transceiver.

Claim 162. (previously presented) The spa as in Claim 155, wherein said interface signal converter is capable of transceiving at least two different types of communication signals.

Claim 163. (previously presented) The spa as in Claim 155, wherein said at least two different types of communication signals is an RS differential signal and an IR signal.

Claim 164. (previously presented) The spa as in Claim 155, wherein said interface signal converter is removably attached to said spa controller.

Claim 165. (previously presented) The spa as in Claim 164, wherein said spa controller defines a cavity, wherein said interface signal converter is removably attached to said spa controller via said cavity. // y

Claim 166. (previously presented) The spa as in Claim 155, wherein said interface signal converter is rigidly attached to said spa controller.

Claim 167. (previously presented) The spa as in Claim 155, wherein said interface signal converter is integrated into said spa controller.

Claim 168. (previously presented) The spa as in Claim 155, wherein said remote computer is connected to said interface signal converter via a communications wire.

Claim 169. (previously presented) The spa as in Claim 155, wherein said communications link is a wireless communications link.

- Claim 170. (previously presented) The spa as in Claim 155, further comprising a second remote computer for sending commands to said spa controller and receiving data from said spa controller, wherein said second remote computer is connected to said spa controller via a computer network.
- Claim 171. (previously presented) The spa as in Claim 170, wherein said computer network is the Internet.
- Claim 172. (previously presented) The spa as in Claim 155, wherein said communications link is the Internet.
- Claim 173. (previously presented) The spa as in Claim 155, wherein said remote computer is controlled by the spa owner.
- Claim 174. (previously presented) The spa as in Claim 155, wherein said remote computer is controlled by the spa dealer.
- Claim 175. (previously presented) The spa as in Claim 155, wherein said remote computer is controlled by the spa manufacturer.
- Claim 176. (previously presented) The spa as in Claim 155; wherein said remote computer is controlled by the spa service technician.
- Claim 177. (previously presented) The spa as in Claim 155, wherein said remote computer is controlled by the spa controller manufacturer.
- Claim 178. (previously presented) The spa as in Claim 155, wherein said communications link comprises a computer network.

Claim 179. (previously presented) The spa as in Claim 178, wherein said computer network is the Internet.

Claim 180. (previously presented) The spa as in Claim 178, wherein said computer network is a LAN.

Claim 181. (previously presented) The spa as in Claim 155, wherein said remote computer is a PDA.

Claim 182. (previously presented) The spa as in Claim 155, wherein said remote computer is a cellular phone.

Claim 183. (previously presented) The spa as in Claim 155, further comprising a spa skirt wherein said remote computer is located underneath said spa skirt.

Claim 184. (previously presented) The spa as in Claim 182, wherein said remote computer is connected to a computer network.

Claim 185. (previously presented) The spa as in Claim 155, wherein said remote computer is used to monitor and control the spa.

Claim 186. (currently amended) A ~~remotely controlled and monitored~~ spa, comprising:

- A) a spa controller means,
 - B) a interface signal converter means, electrically connected to said spa controller means, and
 - C) a remote computer means connected to said interface signal converter means via a communications link, wherein said remote computer means is used to download software to said spa controller means,
- wherein said interface signal converter means converts communication signals transferred from said remote computer means via said communications link, and

wherein said interface signal converter means converts signals from said spa controller means to be communicated to said remote computer means via said communications link.

Claim 187. (currently amended) A ~~remotely controlled and monitored~~ spa, comprising:

- A) a spa controller,
- B) a interface signal converter, electrically connected to said spa controller, and
- C) a remote computer connected to said interface signal converter via a communications link, wherein data comprising a record of errors is automatically downloaded from said spa controller to said remote computer,

wherein said interface signal converter converts communication signals transferred from said remote computer via said communications link and directs the converted signals to said spa controller, and wherein said interface signal converter converts signals from said spa controller to be communicated to said remote computer via said communications link.

Claim 188. (currently amended) The ~~remotely controlled and monitored~~ spa as in Claim 187, wherein repairs are made to said remote computer based on said record of errors.

Claim 189. (previously presented) The spa as in Claim 187, wherein said remote computer is a troubleshooting tool that comprise a microprocessor and an error indicator.

Claim 190. (previously presented) The spa as in Claim 187, wherein said communications link is a wireless communications link.

Claim 191. (previously presented) The spa as in Claim 187, wherein said remote computer is a cellular phone.

Claim 192. (previously presented) The spa as in Claim 187, wherein said interface signal converter is integrated into said spa controller.

Claim 193. (previously presented) The spa as in Claim 187, wherein said interface signal converter comprises an IR transceiver.

Claim 194. (currently amended) The ~~remote controlled and monitored~~ spa as in Claim 187, wherein said record of errors comprises the number of times an error has occurred.

Claim 195. (currently amended) A ~~remotely controlled and monitored~~ spa, comprising:

- A) a spa controller,
 - B) a wireless communications link, and
 - C) a hand-portable remote computer connected to said spa controller via said wireless communications link,
- wherein said remote computer is used to download software to said spa controller.

Claim 196. (previously presented) The spa as in Claim 195, wherein said hand-portable remote computer is a PDA.

Claim 197. (previously presented) The spa as in Claim 195, wherein said hand-portable remote computer is a cellular phone.

Claim 198. (previously presented) The spa as in Claim 195, wherein said hand-portable remote computer comprises an interface signal converter, wherein said interface signal converter converts communication signals transferred from said hand-portable remote computer via said wireless communications link and directs the converted signals to said spa controller, and wherein said interface signal converter converts signals from said spa controller to be communicated to said hand-portable remote computer via said wireless communications link.

Claim 199. (previously presented) The spa as in Claim 195, wherein said hand-portable remote computer is a palm pilot.

REMARKS/ARGUMENTS**Claim Rejections****35 USC 103(a)****Bassett in view of Britt, Jr.**

Examiner has rejected Claims 155-198 under 35 USC 103(a) as being unpatentable over Bassett in view of Britt Jr. and other references. Specifically regarding Claims 155, 186, 195, 198, Examiner states that Bassett shows all the elements with the exception that

Bassett does not show that the remote computer connected to the interface signal converter can be used to download software to the spa controller. ... Britt Jr discloses a system for downloading software to client workstations on an as needed basis via satellite or via the internet (Figure 9). ... It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the software downloading capability of Britt Jr. as a way to upgrade the client software of Bassett because automated upgrades in software prevent such problems as outdated software, inconvenient personal use to install manual upgrades, forgetful users, and additions problems as cited in Col 1, lines 37 - 56 of Britt Jr.

In response, Applicant submits that it would not be obvious to combine Britt Jr. with Bassett to achieve Applicant's invention.

There is No Suggestion to Combine or Modify the References

In order to show obviousness, it is necessary for the Examiner to show some reason, suggestion, or motivation from the prior art as a whole for the person of ordinary skill to have combined or modified the references.

... it is the duty of the examiner to explain why combination of the reference teaching is proper....Absent such reasons or incentives, the teachings of the references are not combinable. *Ex parte Skinner*, 2 USPQ 2d 1788, 1790 (B.P.A.I. 1987)

As stated in Britt Jr.'s Abstract, Britt Jr. discloses downloading software to a client, "which may be a set-top box or a personal computer". A set-top box is a device that enables a television set to become a user interface to the Internet and also enables a television set to receive and decode digital television (DTV) broadcasts. DTV set-top boxes are sometimes called receivers. Conversely, Bassett shows a home automation system for connecting appliances and does not discuss software download.

Applicant submits that Examiner has improperly combined Britt Jr. and Bassett in an effort to show downloading and uploading of information and software to a spa controller. The combination was made without providing a reason, suggestion or motivation for the combination.

Applicant submits that it is improper to combine the references because there is no reason or suggestion for the combination. Applicant is not claiming that he is the first to a home automation system or the first to invent downloading or upgrading software via the Internet to a personal computer or a set-top box. Applicant realizes that this technology has long been in existence. However, Applicant is the first to invent

A spa, comprising:

- A) a spa controller,
- B) a interface signal converter, electrically connected to said spa controller, and
- C) a remote computer connected to said interface signal converter via a communications link, wherein said remote computer is used to download software to said spa controller, wherein said interface signal converter converts communication signals transferred from said remote computer via said communications link and directs the converted signals to said spa controller, and wherein said interface signal converter converts signals from said spa controller to be communicated to said remote computer via said communications link. (emphasis added)

Nowhere in Britt Jr. or in Bassett. is there any suggestion to combine Bassett and Britt Jr.'s methods to download or upgrade software to a spa in a manner disclosed and claimed by Applicant.

Nonanalogous Art

A holding of obviousness requires that the references relied upon by the Examiner are from art that is analogous to that of the invention. In the present case, Britt Jr. is concerned with downloading software to a set-top box or a personal computer. This technology is nonanalogous to spa technology. One of ordinary skill in the art would not be motivated to look to Britt Jr. or any other technology that dealt specifically with downloading software to a set-top box or a personal computer. Applicant's claimed

invention is concerned specifically with spas and spa related technology. References cited against Applicant should be only from related analogous technology.

Long Co-Existing Prior Art

Downloading and upgrading software via the Internet to a personal computer is a technology that has long been in existence. Programmable spa controllers have long been in existence. The spa manufacturing business is a very, very competitive business. Rival companies continually strive for a competitive edge to achieve an advantage in the marketplace. Nevertheless, no one thought of downloading software from a remote computer to a spa controller via a communications link until Applicant did it. If it had truly been obvious, as Examiner suggests, to combine Britt Jr. with Bassett to achieve Applicant's invention, it would have happened long before Applicant did it. To show obviousness, Examiner should be able to explain how Britt Jr. with Bassett could co-exist in a very competitive environment, yet no one ever created Applicant's invention prior to Applicant.

Claims 195 – 199

It should be noted that Britt Jr. discloses downloading software via the Internet to a personal computer or to a set-top box. These procedures are well known and make sense for personal computers and set-top boxes. However, it does not make sense to apply the teachings of Britt Jr. to a situation where a hand-portable remote computer (such as a palm pilot) is used to download software to a spa controller via a wireless link (such as an infrared link).

Prior to Applicant's invention, the prior art method of updating or replacing the software in a spa controller was accomplished by replacing a chip. This was a time consuming and delicate procedure and if not done properly could damage the chip or the spa controller. Applicant's invention has allowed software upgrade/download to a spa controller to be accomplished quickly, easily and inexpensively. The benefits of Applicant's invention have been tremendous. The prior art references cited by Examiner,

alone or in combination, do not show or suggest Applicant's invention. Therefore, Applicant's claims should be allowed.

Examiner's Comments Regarding Hand-Portable Computers

Examiner has rejected Claim 195 and 198 under 35 USC 103(a) as being unpatentable over Bassett in view of Britt Jr. Claims 195 and 198 are limited by a "hand-portable remote computer connected to said spa controller via said wireless communications link". Because Examiner has failed to show that either Bassett or Britt Jr. discloses a hand-portable remote computer, Applicant respectfully requests Examiner withdraw this rejection.

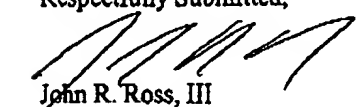
Claim 199

Examiner did not appear to Examine Claim 199. Applicant respectfully requests consideration of Claim 199.

CONCLUSION

Thus, for all the reasons given above, this application, as the claims are presently limited, defines a novel, patentable, and truly valuable invention. Hence allowance of all outstanding claims of this application is respectfully submitted to be proper and is respectfully solicited.

Respectfully Submitted,



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